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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,513	04/10/2001	Reza S. Bundy	020582-000600US	2460
20350 7590 10/31/2007 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER TRAN, HAI	
			ART UNIT 3694	PAPER NUMBER
			MAIL DATE 10/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/832,513

Applicant(s)

BUNDY ET AL.

Examiner

Hai Tran

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-16, 18-25, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-16, 18-25, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This is the **Final Office Action** in response to Applicant's Amendment filed on August 10, 2007.
2. Claims 1 and 14 have been amended for clarification purpose.
3. Claims 1-3, 5-16, 18-25, 30, and 31 are pending in this application and have been examined.

### ***Acknowledgment***

4. Applicant's Attorney called the Examiner on 7/31/2007 attempted to clarify the meaning of "warranty" in the Applicant's application. The Examiner informs the Applicant the Examiner is well aware of that, but it makes no sense (please see below for explanation).

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-3, 5-16, 18-25, 30, and 31 filed on 8/10/2007 have been considered but they are not persuasive.
6. Applicant asserts that the Examiner's cited references do not, alone or in combination, teach "a warranty for the inspection report of product". The Examiner begins to point out to the Applicant that a "warranty" being associated with an inspection report does not make sense and this has been pointed out in the previous Office Actions (mailed 7/11/2006 and 2/27/2007).

7. On page 16 of the 7/11/2006 Office Action, it explains that within the art of business, there are two principle methods of warranting a product. The first type includes a warranty on a product with out an inspection. Sellers utilize this type of warranty with low cost, high volume products where inspection would be cost prohibitive compared to simply replacing a defective product. The second type of warranty includes an inspection. In this case, products are inspected and warranties are provided when a product differs from the inspection report. Companies generally utilize this type of warranty for high price, low volume products where replacement costs are very high. So if an inspection report finds a product to be not bone fide and a buyer still purchases it, then any warranty would be a non-bone fide product (i.e. associated with the inspection). This makes no sense. The Examiner knows of no such warranty procedure where a product is inspected and a warranty is still given on the product regardless of the inspection results.

8. On page 9 of the 2/27/2007 Office Action, it explains that per the definition of the Business Dictionary ("Dictionary of Business Terms", third edition, dated 2000), a "warranty" means "guarantee given by a seller to a buyer that the goods or services purchased will perform as promised, or a refund will be given, an exchange made, or a repair done at no charge. Warranties usually become effective when the manufacturer receives a warranty application from the buyer (not the date of purchase) and are effective for a limited period of time." Based on this definition, the Examiner interprets that a "warranty" is not effective until the product is purchased and the manufacturer (or seller) receives the application and that the warranty is for the product, not for the

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inspection report. It makes no sense for a buyer to receive a warranty not on the product he purchases, but on the inspection report.

9. In conclusion, the Examiner believes that he had already pointed out to the Applicant in the previous Office Actions that within the art a "warranty" is for a product, not for an inspection report and hence the previous prior art used for rejections is valid. The Examiner believes that the record is clear with respect to this limitation, and is satisfied that the combination of the references discloses Applicant's invention as claimed. The rejections with respect to claims 1-3, 5-16, 18-25, 30, and 31 in the previous Office Actions are clear and valid; hence, the rejections remain stayed.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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3. Claims 1-3, 5-16, 18-25, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of ebay in view of Walker and in further view of Mondera (News article, "Mondera.com Established New Standards of Quality and Consistency in Jewelry Industry", dated 10/21/1999).

4. Woolston teaches a method and apparatus for creating a computerized market for used goods wherein sellers through consignment nodes can offer these items to buys via an auction.

5. With respect to claim 1 Woolston teaches a preregistration module coupled to said at least one server for identifying and verifying a user of said auction system wherein said preregistration module checks the credit history of said user and generates a registration record of said user (column 5; lines 10-20). Examiner notes that establishing an account represents a registration record. Further, the use of well-known credit card clearing techniques represents checking or verifying a credit history (i.e. verifying the user has a proper credit record).

6. With further respect to claim 1, Woolston teaches an assurance module coupled to said preregistration module for conducting a presale inspection of said merchandise item and to generate a merchandise inspection report (column 2; lines 40-50; column 3, lines 42-46; column 4, lines 30-35 and column 18; lines 46-50).

7. Examiner notes that the system of Woolston relies on "consignment nodes" or third party individuals who are market leaders for a given used good (column 3, lines 42-46). These nodes may take possession of a good and make an electronic presentment of the good (column 2, lines 45-46). Examiner asserts that this electronic

presentment may include subjective criteria, added by the consignment node in order to provide authenticity (column 4, lines 30-35). Examiner asserts that these features represent an Applicant's assurance module and the subjective criteria for authenticity represents an inspection report.

8. Examiner further supports these positions by noting that Woolston teaches the purpose of the consignment nodes are to provide verification of the good being sold/auctioned and provide assurance to the buyers that the item present is genuine (column 18, lines 46-50). As such, in order to provide the assurance of the bona fide nature of the goods and to provide subjective criteria as to authenticity, the consignment node must inspect the good prior to electronically presenting. Thus the information in the electronic presentation clearly represents an inspection report.

9. With further respect to claim 1, Woolston teaches a description module coupled to said assurance module for displaying said merchandise inspection report and a description report of said merchandise item (see column 2, lines 40-50 and column 4, lines 34-37). Examiner notes that a electronically presenting the goods represents the use of a display module to display the merchandise including the subjective criteria as to authenticity (inspection report) and a description report.

10. With further respect to claim 1, Woolston teaches a bidding module coupled to said description module for processing a plurality of bids from a plurality of users, wherein said bidding module analyzes each of said plurality of bids from each of said plurality of users to determine whether an incoming bid is higher or lower than a current high bid and to determine a current high bid (see column 5, line 46 – column 6, line 67);

11. With further respect to claim 1, Woolston teaches a system database coupled to said at least one server for storing each of said plurality of bids from each of said plurality of users, said merchandise inspection report, said description report and said registration report (Figure 1; column 3, lines 1-6 and 42-46); Examiner notes that the consignment node contains a system database coupled to the network server for storing all the information taught above with respect to claim 1.
12. With further respect to claim 1, Woolston teaches a notification module coupled to said system database for assigning each of said plurality of bids with each of said plurality of users and to notify each of said plurality of users whether their bid is successful (column 6, lines 30-32).
13. With respect to claim 1, Woolston teaches wherein said plurality of users includes a buyer of said merchandise (column 5, line 46- column 6, line 67).
14. With respect to claim 1, Woolston teaches wherein said merchandise inspection report is displayed prior to said processing a plurality of bids from a plurality of users (column 4, lines 30-38 and column 6, lines 21-27). Examiner once again points out that a consignment node adding subjective criteria to a good's text record for authenticity purposes represents an inspection report. Further, Examiner notes that column 6, lines 21-27 specifically teaches displaying the good's text record prior to receiving bids, as such the inspection report is clearly presented prior to the processing of bids.
15. With respect to claim 1, Woolston teaches that the inspection report is conducted by an impartial third part (column 18, lines 46-53). Examiner asserts, that as the



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purpose of the consignment node is to present assurance and authenticity, the consignment node is an impartial third party.

16. With respect to claim 1, Woolston teaches does not specifically wherein auction system removes merchandise item if a seller of merchandise item does not agree with merchandise inspection report.

17. Examiner starts by noting that claim 1 is an apparatus claim and therefore covers that the device is, not what the device does. As such, the apparatus claims (1-13 and 30) are anticipated by Woolston's teaching of a de-post module (see for example column 17, lines 41-55). In other words, why the user de-posts is a recitation with respect to the manner in which the claimed apparatus is intended to be used and does not differentiate the claimed apparatus claims from the prior art apparatus.

18. With respect to the method claims (14-25 and 31) and in the alternative of the above interpretation, Examiner notes that Woolston teaches a de-post feature that may be used when a seller does not want the consignment node user to post the item any longer. Examiner interprets this as being applicable when a seller does not agree with the inspection report performed by the consignment node (e.g. impartial third party).

19. Examiner also notes that Woolston teaches that the listing of a product in a database include an inspection report by the third party/consignment node (see column 4, lines 30-35).

20. However Woolston is silent with respect to why the user would de-post the item (i.e. if the seller does not agree with the inspection report).

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21. eBay teaches an "end your auction" feature which allows users to immediately end an auction. In particular eBay teaches use of this feature is a user wishes to edit an items listing especially after a bid has been accepted. In other words, eBay teaches a user canceling an auction if he/she does not agree with the listing.

22. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Woolston so that a seller to de-post an auction if he/she does not like the listing, specifically the inspection report as taught by eBay. One of ordinary skill in the art would have been motivated to modify the reference in order to provide sellers with end auctions they believe won't make them any money.

23. With respect to claim 1, Woolston does not teach the inspection report includes a warranty wherein the warranty is associated with merchandise inspection report.

Mondereia teaches presale certification and final inspection before the products are offered to consumers. As in 1999, all Mondera's gems in addition to certified by the Gemological Institute of America/GemTrade Laboratory (GIA/GTL) are also subject to rigorous final inspection by the GAA before being offered to consumers. The GAA (Gemological Appraisal Association, Inc.) is an independent, third party, and appraisal laboratory. GAA maintains the right to reject any item that does not meet its standards and provides Mondera's customers with the highest quality guarantee.

24. Examiner notes that the guarantee insures that the buyer does not purchase a counterfeit item or an item of unacceptable quality. As such, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the inspection report of Woolston to include a final inspection as taught by

Mondera. The motivation is to combine the references as taught in order to insure that a buyer does not purchase an item that is unacceptable of quality.

25. Examiner notes that the Applicant has not asserted any reasons for the validity of claims 2-3, 5-16, 18-25, 30 and 31, and the Examiner respectfully disagrees with those reasons for claim 1 and hence all the aforesaid claims also.

26. Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Conclusion***

10. Claims 1-3, 5-16, 18-25, 30, and 31 are pending.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is (571) 272-7364.

The examiner can normally be reached on M-F, 9-4 PM.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HT

  
ELLA COLBERT  
PRIMARY EXAMINER